

## ACTON PLANNING BOARD PUBLIC HEARING

DATE May 17, 2012

ROLL CALL – Meeting began at 7 pm

Members present were:

- Chip Venell – Chairman
- Thomas Cashin – Vice Chairman
- Jessica Donnell
- Yoli Gallagher
- Arthur Kelly
- Robert Smith – Alternate
- Gavin Maloney – Alternate

Members absent were: None.

Also present were: J.T. Lockman, SMRPC, Sheila Sargent, Charlie Sargent, Jean Noon, Bill Noon, Bob Boynton, Scott McLeod – Ashcove Construction, Kenneth Paul – Code Enforcement Officer, Linda Capristo – Recording Secretary

MINUTES – Approval of Minutes from April 5, 2012 with a motion from Mr. Kelly seconded and Mr. Cashin seconded – Unanimous Vote. Minutes from May 3, 2012 were not complete.

UNFINISHED BUSINESS – **Revisit Proposed Stormwater Management Ordinance** with Guest, Jon Lockman from Southern Maine Regional Planning Commission. Mr. Venell introduced Mr. Lockman from SMRPC and explained that he is here to give us his insight on the proposed Stormwater Management Ordinance. Mr. Lockman said he was asked by CEO, Mr. Paul to come give some input to the PB. He continued by saying he was very impressed with all the PB is trying to accomplish with the Stormwater Management Ordinance. He agreed with Mr. Paul that it may be a bit much, given it is unusual for a Town this size to have a complicated standalone Ordinance. Mr. Lockman said if he had been given the job he probably would have similar standards but would integrate it into the Town of Acton's Zoning Ordinance instead. He said he thought this type of Ordinance might be perceived differently if the content was presented within the Zoning Ordinance, rather than a standalone document. He said when you push this as a standalone Ordinance, it has to have a Purpose section; it has to have Goals section, an Enforcement section, an Engineering Review section and Performance Bond. This info is already in the Zoning Ordinance. Mr. Lockman said by integrating it; you can probably immediately cut it to half of its length. He said another thing; it takes a lot of the standards from the reference manuals and lays them out. He said he did a similar job for the Town of Elliot a couple of years ago; we (SMRPC) incorporated the D.E.P. Stormwater Low Impact Development which are the standards in your Subdivision Ordinance without repeating them all within the Ordinance. Simply stated, if your development disturbs a certain area, the stormwater must remain on site. This passed in Elliot with virtually no issues from anyone in the Town. Mr. Lockman said he read over the Ordinance once again prior to the meeting and feels towards the end, or the last two pages should be Section 4.4 Enforcement and then Section 5 – Project Review. He continued by saying this proposal is very, very strict in requiring a Performance Bond for all Stormwater Management work, and under Enforcement saying that the Municipality could take over responsibility of implementation of a Stormwater Plan should they screw up and not finish it, or don't do it. He believes this is a bit of a stretch for the Town. Most of this is based on the Code Officer's ability to try to get people to comply by saying if you don't he can bring you to Court under Rule 80K and hopefully people will come around; then if someone fails to comply you can take them to Court. Before the this meeting started, one of the members asked me if other communities in York County have standalone Stormwater Ordinances and the answer is not that I am aware of. Everyone else has handled Stormwater Management by beefing up the Standards in their Zoning Ordinance. He said he looked at Acton's Stormwater Ordinance by searching for 'stormwater'; then copied and pasted the paragraphs to a separate document. He said you do have definitions for impervious surface and requirements for Stormwater Management. You don't have the threshold described like in the new proposed Ordinance. You asked my advice and I suggest taking a part what was done and moving some of the meat of it into the current Zoning and then eliminating any of the extra sections such as Purpose statements, Enforcement statements and Performance Bond statements etc. Remove all those things as they are already in the Zoning. He continued by stating he commends what you are doing and Acton is so beautiful because of its lakes. If they turn green and get nasty, you won't have anything. It is a great thing what

you are doing, but I do tend to agree with Mr. Paul that maybe a standalone Ordinance is a little much for your staff to deal with rolling it out. Ms. Gallagher said that she thought that they're thinking was to start with a standalone and work toward integrating it. Mr. Lockman said he doesn't see it that way and would put an Article on the Warrant to change the Ordinance. You simply add underlines to things you are adding and strikeout for any words you are deleting. The Warrant Article would say to amend the Acton Zoning Ordinance to Improve Stormwater Management. It would be the same with a standalone Ordinance. Mr. Smith asked Mr. Lockman if any other Town's standalone Ordinance failed at a Town Meeting. Mr. Lockman said he knows of no other Town that has a standalone Ordinance. He said if there is one, he has missed it. If asked, I would always recommend that any Town that has part-time staff, no Town Manager or a Town of your size; try not to get overextended with standalone Ordinances. He said he has worked with a lot of Towns that have trouble tracking Ordinance changes. Mr. Maloney asked if Mr. Lockman worked on New Durham's Stormwater Ordinance. He responded no he is not familiar with the Ordinances across the border in New Hampshire. Ms. Donnell said it was decided to not go Town wide and start with the Shoreland Zone. Mr. Lockman said that is another reason to integrate it into the Zoning and into especially the Shoreland Zone, if you are not going Town wide. If you do nothing at all, you have Stormwater Standards although not the strongest, they are there for any activity, anywhere in Town that requires a site plan review.

Mr. Cashin made a motion for Mr. Lockman to give an estimate of what it might take SMRPC to come up with a draft folded in to our existing Zoning Ordinance; Ms. Gallagher seconded – unanimous.

Mr. Venell said there is no immediate rush as we have another year – June 2013. Mr. Lockman agreed and said it shouldn't take him long to come up with hours and an estimate by the next meeting. Mr. Cashin asked if somebody would amend his statement on applicability in the Shoreland Zone. He said the Board knew there was some redundancy in Site Plan Review and Sub-Division areas. He said in both of those existing documents LID measures were discussed and we knew we had covered those areas. It is the individual residential development area that we were trying to address. Mr. Venell said we are addressing any work in Shoreland Zone, Resource Protection and Commercial B.

**NEW BUSINESS** – Best Possible Location – F/U from Site Walk (5-7-12) – 140 Foss Road (Tax Map 117-52)  
Kelli L. Demakis Lessard and James M. Lessard

Mr. Venell wanted make sure everyone had Mr. Smith's notes from the Site Walk on May 7, 2012. Mr. Paul said that he was out to the site on Foss Road with Mr. Joseph Anderson of York County Soil and Water. He said we usually get his opinion on steep slopes and difficult property. Mr. Paul said Mr. Anderson had the same consensus to relocate the structure right behind the existing with erosion control practices the project could be done as discussed. Mr. Cashin asked about the access. Mr. Paul said a temporary access would be created and put back after the project including stump grindings throughout the whole process. They could have a 6 foot path, whether they want it where it is now, or bring it down from where they probably will park above the septic and bring a set of stairs down. Mr. Paul said it looked to him as the better of the two, but it is up to the applicant. Mr. Cashin asked about walking path down to the water; is that still the proposed access of the excavator. Mr. Paul replied, correct. Mr. Kelly said you are going to haul off the soil. Mr. Paul responded that on that particular site he would store no soil, take it all away. They may have room for a little but there is no storage. Mr. Cashin said to Mr. Paul you said six feet. Mr. Paul replied when you are done. So as you are digging you would be making it wide enough while removing the dirt in dump trucks and hauling it away. You would do your stump grindings throughout the whole process but it would be up to the contractor and his thoughts. Then when you are done, you bring the sand back in and put the slope back in place, put your stump grindings in or the erosion control vegetation in. Mr. Cashin asked the estimate of land that little traverse of this. Mr. McLeod said it hasn't been measured yet but thought it might be 75 to 100 feet. Mr. Cashin said more like 175 feet maybe. Mr. McLeod said he doesn't think it's that much. The frontage is only 150 feet and we are

only coming across it half to three quarters of the way to gain access. It is just so we can get down where it is flat. Mr. Cashin said he is kind of amazed that Mr. Anderson of YCSW was perceptive to that. Mr. Venell explained to the audience who Joe Anderson is and what he does for the County. He then told them that often times does something to enlarge their camp near the water or to move it we send Mr. Anderson for a management plan to restore the property. The engineer who does those plans looked at the site with Mr. Paul and had the same recommendation as the Code Officer. Mr. Venell said Mr. Paul's recommendation is to move the camp back 20 feet and enlarge it 30% from what the current square footage is; then clean up all the land in front of it. Mr. Cashin said he is concerned about the stability of the slope if and when it is disturbed. Mr. McLeod said if you recall, going down that property across that path on the left hand side there is a flat area so you don't have to go all the way down where the house is. This is exactly what was discussed with Mr. Anderson. The intention is not to run a machine from the septic system all the way down the hill. It is to reach out from the flat area as far as we can to build the trench up through. Mr. Smith asked how do you know how far back to go before it starts to collapse. Mr. McLeod said it depends on the soil and it may only go back 14 feet as opposed to 20 feet. It depends upon how far back you will allow me to push it back. The foundation will be designed to hold the hill. Mr. Smith said but you are also digging left and right. So there is no foundation holding that disturbed area. Mr. McLeod said that it would be retained with vegetation and erosion control. Mr. Cashin asked do you think it is worth moving it back. If the Board were to decide to leave it where it is wouldn't there be advantages for not disturbing the site. Mr. McLeod said yes, but you would still need the trench for the septic, but besides that, it could very well, but realize you are 14-15 feet from the water. We are here to determine where the best location is. Mr. Venell asked what the Board is thinking. Mr. Cashin asked Mr. Paul about a Variance and moving the dwelling to the top of the hill and a possible Variance from the Road. What about the septic will you have to go through the ZBA for that. Mr. Paul said he has the authority to make the decision on that. He said he feels the structure at the bottom of the slope is protecting better than if you put the structure at the top of the slope. You push it to the top and you will have more disturbances there and then the path down the hill. Mr. Maloney said they discussed this prior to the site walk. Mr. Smith said going back to the three possibilities that were mentioned at the site walk and can we eliminate any. Mr. Cashin then said he would like to get an overview of existing camp conditions with regards to utilities. That being water supply and sewage disposal in terms of what is and what could be. He said he would like to stand as far back from this proposal and not just consider what is permissible but what is sustainable in the watershed this being a precedent setting on the lake. He said this struck him as stretching of the boundaries of what is doable around the lake. I think it important to find out about the water supply and the way the sewage will be handled. Ms. Donnell said the water is coming out of the lake. Mr. Cashin asked Mr. McLeod to answer. Mr. McLeod said yes it is currently coming out of the lake but there is no reason he can't drive a point. Mr. Cashin asked him what about waste disposal. Mr. McLeod said he had no idea if the waste disposal is on site or if it is taken off site, he has no idea. Mr. McLeod asked Mr. Cashin what does this have to do with the location of the building. Mr. Cashin said he was getting back to what is permissible and what is sustainable. There is going to have a great deal of soil disturbance, granted it may be addressed with erosion sedimentation control. He said he thinks that is stretching it because of the slope. The more measures you implement onsite to upgrade the drawing; the more soil disturbance you will get in to with the septic piping and whatever access down to the camp and the decision to moving it versus just elevating it. Mr. Kelly asked Mr. McLeod about the 30% expansion and if it is on both sides or behind. Mr. McLeod said the plans are still in the works but it would be added to its width. Mr. Kelly said and a little to the depth. Ms. Gallagher asked if the issue was moving it to the left and getting the septic all the way across the hill; then why not a composting toilet or something. Mr. McLeod said the site is capable a sustaining a septic system; so why would you not want a septic system. Ms. Gallagher said if you could move it to the West and have a lot less disturbance in the process then putting the septic in which would create all that disturbance. Mr. Venell said you still have to deal with the gray water. Mr. McLeod said the idea is to keep it out of the lake. Mr. McLeod said giving the site, and the fact that there is an approved septic system design on it. Is there any reason not to use a natural septic system opposed to some other system. Mr. Paul responded that he would prefer the septic system where it is and think if you keep the

house right behind the existing one; then when you come out of the house the disturbed area from the old place that has to be graded and re-vegetated would be the least amount of damage to the site and the least amount of impact. You go shifting to the right or the left that would impact the lake from the side or something else. Mr. Kelly said the disturbance would be confined to the foot print of the house and straight up the hill as opposed as the disturbance coming across and down at the same time. Mr. Paul said where the old camp was they will have to clean up and re-vegetate it and with the new camp behind it, when you re-vegetate it that area you gain access to the lake. If you moved it to the side they still want access to the lake which would be straight down or back around somehow. Mr. Kelly said so the location of the camp has been somewhat stabilized behind it. Mr. Venell said the foundation would be designed to hold it back; it will be a great big frost wall. Mr. Maloney said this seems to be an added expense to the owner to need that added structural need for a stronger foundation. Mr. Venell either way they would still have to put a foundation underneath it – correct. Mr. Maloney said that is up to the Board to decide. Mr. Paul said the owner has the option to put a foundation under it; the Town just needs to tell them where to relocate the non-conforming structure to the best spot on the lake. Ideally, it would be 100 feet from the lake which those 100 feet or more don't even come through the Planning Board because they are conforming structures. You guys only deal with the ones that are less than 100 feet back. Mr. Venell said as a rule, we try to make them less non-conforming and push them back as feasibly possible. Mr. Paul said usually what we do is set a bench mark down by the water. We would set a point, a piece of rebar with a marker on it with cross point. If we told them 14 feet from the shoreline; the shoreline being so jagged you could get several different areas; you set a point and measure back from there so there is no confusion. That would be the closest point to the structure; eaves or overhangs. Mr. Venell asked about stairs. Mr. Paul said the front stairs are standard stairs with a 3 by 3 landing which are exempt. Mr. Venell said so that means the just the structure itself. Mr. Cashin asked on the proposal and on the excavator path that diverse the slope; for at least half of that diverse on the drawing and steepness of that slope you will have an untangled cut. He said he doesn't know how you would do that. Mr. Kelly said the fill, you would cut the whole path the excavator is cut, it is not that you filled out on the side. Mr. Paul said correct. If you didn't have the water as an issue, you could cut uphill and throw the dirt downhill where you wouldn't have to cut in as deep but, in this case you would not want to throw it down hill or disturb downhill. You would want to tuck into the bank as much as possible. Mr. Kelly asked about how wide it would have to be cut. Mr. Paul responded about 12 feet at least, so maybe a dump truck to get in there, which may be larger and stump grinding down through. Mr. Maloney asked about the concrete truck. Mr. Paul responded the concrete will be pumped down. Mr. Maloney read from the current Zoning Ordinance Section 5.8 (2) *In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible;* Section 5.8 (1) *All activities in the Shoreland and Resource Protection Districts which involve filling, grading, excavation or other similar activities which result in un-stabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan.* Mr. Cashin asked Mr. Paul if he would get a drawing with some detail. Mr. Paul said we always get a site plan in the Shoreland Zone; it could be as simple as a squiggly line that indicates silk fence. We go over it with the applicant and also York County. If it is a simple project, Joe Anderson would do a walk through and indicate where to replant etc. This particular location; Mr. Anderson would end up doing a drawing and erosion control plan.

Mr. Maloney continued by reading an excerpt from Section 1.4.11.4 *Relocation – In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.* Ms. Donnell said haven't they all been considered. Mr. Maloney said that's what we have been talking about and all applicable on this site that's for sure. Mr. Paul said he doesn't usually look at the camps on either side as someday they will be moved back and it does happen over time. Ms. Donnell said she thought they should just go with Mr. Paul's recommendation. Mr. Paul said maybe reduce it from 20 feet to 18 or 16 feet. Ms. Gallagher said he would have to determine that once he is in there – right. Mr. Paul said he could come back and say he hit ledge or we hit this or that. We have done that before with a couple of properties from

Mousam Valley. Once they dive into it, they have come back and said they need to move it to the side a little bit. On these old camps and tough lots, sometimes they are in the best spot without foundations. Mr. Venell asked if Mr. Paul would make a recommendation; would he still be comfortable with 20 feet back or 16 or 18. Mr. Paul said a minimum of 16 from the original camp location from eaves and overhangs. Mr. Venell said your recommendation would be a minimum of 16 back from where the front of the building is now to the front of the new placement would be. Mr. Paul responded correct. Ms. Gallagher asked what if they can't do 16. Mr. Paul said they would have to come back and talk with the Board. He continued by saying that would be 2 feet behind the original camp for the roof and roughly 4 feet back from the corner. Mr. Venell said they would be going into the hill a little bit less. It seems that has been a concern for some of the Board and how unstable it could make it and maybe that is a better compromise. Mr. Cashin asked with that proposal Mr. McLeod, where would that new cellar floor elevation be as opposed to the existing grade. Mr. Paul responded right by the camp would be your floor slab which would elevate the camp approximately 2 feet. Mr. Venell asked the Board if we are clear as to what Mr. Paul's recommendation is to move the camp at least 16 feet back, the closest point to the water. The front of the house would be no less than 16 feet away, whether it is a gutter, overhang or what have you. Mr. Venell asked the audience if there is a question that hasn't come up yet, you can ask them now. All we are dealing with is the best possible location of this camp; we don't deal with road issues because it is a private road. The only reason there is going to be a path to be enlarged on this property is to get the excavator in there to knock down the old camp and dig a cellar hole for the new one and to dig the septic reaching up and then at the top reaching down. He continued, if the house was demolished a road would have to be dug to bring an excavator down there to knock it down and for a truck to haul it all out. So there has to be some kind of road down there just to knock it down and clean the site up. It will all be cleaned up when done. Ms. Jean Noon spoke up and said she is concerned about the road and doesn't feel it is physically possible. She stated her property line is approximately 4 feet from the tar. Mr. McLeod said the R.O.W. which is the Noon's property is the only access, once the BPL is determined; he said he would work with the property owner and discuss the site work and repairing it to its current state or better than it is right now. The rainwater that runs down would not run as much when we are through. We would put down the stump grindings and you could run a 70,000 pound truck over it; when the job is done you remove the talons. Someone asked if you could drive a car over it and Mr. McLeod replied yes, absolutely. He continued by saying there may be a couple of times where you run into a truck coming in our out but certainly with complete professionalism. You would be able to get your vehicles in or out. Sheila Sargent questioned the 30% expansion and asked if could exceed the footprint of the house. She said she is about 15 feet from the water and was not allowed to change the footprint of the house. She stated that she was allowed to go up but not enlarge the footprint. She asked why can they increase the 30%. Mr. Cashin explained to Ms. Sargent that in her particular situation with a non-conforming lot on the peninsula; by expanding it to the side you would be increasing by getting closer to the water. Mr. Venell spoke up and said which you can't do. He continued by saying as long as you don't get closer to the water, you can increase your footprint by 30%. Ms. Sargent said things must have changed because we were told no in 1990. Mr. Venell said he can't say why anyone said that because if you get closer to the water on any of the three sides; they would not allow you to do that. Ms. Sargent said so we are allowed to do that now. Mr. Venell said he doesn't know her situation. Right now with this place, the law says if you are within 100 feet of the water you can increase your square footage or your volume by 30% but you can not go any closer to the water than you already are. That includes the closest part of your dwelling to the water, not your kitchen or not your wall; this means your eaves or porch etc. Ms Noon asked if there is a barge on Great East Lake. Mr. Venell replied that he did not know. Mr. Venell said Mr. Paul's recommendation would be 16 feet from the water. Ms. Gallagher motioned to accept Mr. Paul's recommendation to move the camp back at least 16 feet from the water; Ms. Donnell seconded. Approved 3-1. Mr. Cashin said Ms. Donnell can't vote as she didn't see the site. Ms. Donnell said she took the minutes at the first meeting, looked at the Town Maps and Google Earth. Ms. Donnell continued by saying she feels fully informed. Mr. Venell said it is up to him and she can vote. Mr. Cashin no she can't... Mr. Venell said it is not mandatory for a vote. Mr. Maloney said that when we went to the Maine Municipal workshop, they did say that it is best if members voting on a subject were most informed

and made aware, whether by attending a site walk....Mr. Maloney said he does remember that being mentioned. Mr. Venell said at best, it doesn't require that and as far as our Ordinance says, I say who gets to vote. If Ms. Donnell says she has enough knowledge about this; than I have no problem, and I might add that we have dozens of these and you people don't want to go out for site walks anymore; you take Mr. Paul's recommendation on some pictures and pictures don't always tell the story. We have had other site walks for cell towers and sub-divisions and I was the only person that showed up. Then you people vote on that sub-division without ever being out there so don't anyone start saying oh wait a minute. He continued, any further discussion on Mr. Paul's recommendation. Approved 3-1.

### **Best Possible Location – 130 West Shore Drive (Tax Map 123 Lot 032) John & Bertha Flood**

Mr. Venell questioned Mr. Paul about the word seasonal from the Agenda. He read the owners would like to demo damaged cottage and replace with seasonal cottage on foundation with a walkout. Mr. Paul said there is an exemption with the State that runs until the first week of June for seasonal cottage. If you disconnect the water in October you are exempt from the Energy Code. He continued by saying the homeowners are trying to get the exemption. Mr. Cashin asked what's the advantage of that. Mr. Paul responded no insulation; similar to the one we just reviewed. There probably almost never have someone down there in the winter. If they did want to make it year round they would have to insulate and finish off the camp. Mr. Smith said he couldn't tell where it is; where are we talking. Mr. Venell asked how far from the water now. Mr. Smith replied as he was looking at the site plan; was 25 feet will be 45 feet. Mr. Venell asked about the septic and Mr. Paul answered they have an approved septic. Mr. Venell questioned if they were increasing it 30% and Mr. Paul replied yes. Mr. Cashin asked what the site like. Mr. Paul said it is somewhat flat; there is an old retaining wall they are going to try to stuff it back behind that and use the retaining wall as a walkout. Mr. Kelly asked why only 45 feet. Mr. Paul replied that the septic and tank are on back side. Mr. Paul said the driveway stays the same; fairly flat. Mr. Smith asked Mr. Paul what the negative side of this was; why is this an issue. Mr. Paul explained that it is still non-conforming and therefore needs to come before the Planning Board. Mr. Venell said we are trying to make it less non-conforming by moving it back; anything less than 100 feet we need to review it, State Law. If it was outside 100 feet it would just be Code Enforcement. Mr. Cashin said the retaining wall is currently behind the camp now; Mr. Paul replied yes. Ms. Gallagher asked if the walkout basement counts as the 30%. Mr. Paul said no, the whole foundation is exempt if they go through the process of best possible location. Mr. Kelly asked if the 30% was just footprint or through the second story. Mr. Paul replied it is cubic feet, volume and square foot floor area. Multiple floors, a deck would be floor area but no volume. Mr. Paul said that started in 1989. Mr. Cashin inquired about the neighbors. Mr. Paul said the PB moved them both back about the same distance; well at least the house before this one. Ms. Gallagher asked about replanting. Mr. Paul said yes; the camp was destroyed from Hurricane Irene; the homeowner's are just getting through the insurance process. The insurance company wanted to just pay for what was there which isn't much. Mr. Paul said he did believe they had Code updates in their policy which if you have updates in your policy; then the insurance company has to rebuild at today's standards. If it is just replacement cost; they will only give you money for what was there; big difference between the policies. West Shore Drive had a tremendous amount of tree damage by Hurricane Irene; the wind was 40-50 mph and came at an odd direction. Mr. Kelly motioned to accept Mr. Paul's recommendation to move the camp back 45 feet; Mr. Cashin seconded. Unanimous Vote.

**ADJOURNED** – 9:18 pm